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Paula F. Durr
Name of Person Mailing
Paula F. Durr
Signature of Person Mailing

P&G Case AA432

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of :
Brian Francis Gray, et al. : Confirmation No. 5838
Serial No. 10/009,087 : Group Art Unit 1615
Filed November 8, 2001 : Examiner S.L. Howard

For Absorbent Article With Skin Care Composition

BRIEF ON APPEALS

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Enclosed, pursuant to 37 C.F.R. 1.192(a), is Appellant's brief on Appeal for the above application. The Brief is being forwarded in triplicate.

Please charge the fee of \$330.00 pursuant to 37 C.F.R. 1.17(c) to Deposit Account No. 16-2480 for the filing of the brief in support of an appeal. The Commissioner is also authorized to charge any additional fees which may be required to this account. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

By

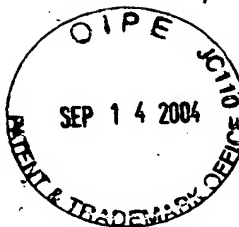
KC

Kevin C. Johnson
Attorney or Agent for Applicant(s)
Registration No. 35,558
(513) 634-3849

Date: September 9, 2004

Customer No. 27752

(BriefonAppealTrans.doc)
(Last Revised 4/3/2003)



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Paula F. Dunn
Name of Person Mailing
Paula F. Dunn
Signature of Person Mailing

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Serial No. 10/009,087 : Group Art Unit 1615
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For ABSORBENT ARTICLE WITH SKIN :
CARE COMPOSITION :
:

APPELLANT'S BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450
Dear Sir,

This is an appeal of Claims 1-10, currently pending in the above application. These claims were finally rejected by the Examiner in an Office Action dated April 20, 2004. A timely Notice of Appeal was submitted by the by Appellants on August 19, 2004. Appellants' brief is submitted in triplicate.

REAL PARTY IN INTEREST

This Application has been assigned to The Procter & Gamble Company of Cincinnati, Ohio. The Inventor(s), Gray, et al., assigned their interest to the Procter & Gamble Company in an assignment corresponding to application Serial No., 10/009,087 filed November 8, 2001.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to the Appellants, or known to Appellants' legal representative, that will directly affect the Board's decision in the present appeal.

STATUS OF CLAIMS

Claims 1-10 are pending in this application. Claims 1-10 have been rejected. Claims 1-10 are being appealed. A copy of Claims 1-10 on appeal appears in the attached Appendix A.

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STATUS OF AMENDMENTS

Appellants have not filed an amendment subsequent to the Final rejection of the claims. The Appellants are appealing from a Final rejection of the claims mailed on April 20, 2004 in which the Examiner considered the response to an Office Action mailed on February 20, 2004 unpersuasive.

SUMMARY OF INVENTION

The present invention relates to an absorbent article having a body surface and a garment surface. The absorbent article comprises a topsheet disposed at the body surface, a backsheet disposed at the garment surface, and an absorbent core disposed therebetween. At least a portion of the absorbent article is provided with a skin care composition. The absorbent article has a preferential acquisition zone and a skin care zone. The preferential acquisition zone covers at least a portion of the vulva of the wearer when the absorbent article is applied to the wearer's body. The skin care zone is provided with the skin care composition of a greater basis weight than the preferential acquisition zone.

ISSUES

1. Whether Claims 1-10 are unpatentable under 35 U.S.C. § 103(a) as being obvious over WO 99/22684.

GROUPING OF CLAIMS

Claims 1-10 are within the same patentable grouping and will stand and fall together.

ARGUMENTS

Whether Claims 1- 10 are unpatentable under 35 U.S.C. § 103(a) as being obvious over WO 99/22684.

Claim 1-10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 99/22684.

The Appellants respectfully traverse the rejection because the reference does not teach or suggest all of Appellants' claim limitations and thus, does not establish a *prima facie* case of obviousness.

The Office Action states that WO 99/22684 discloses absorbent articles that absorb body exudates, that comprises a liquid pervious topsheet and a liquid impervious backsheet which is joined to the topsheet. The Office Action states that WO 99/22684 discloses that the topsheet is disposed at the body surface and that the backsheet is disposed at the garment surface. The Office Action states that WO 99/22684 discloses that the absorbent core is located between the topsheet and the backsheet. The Office Action contends that WO 99/22684 teaches that the topsheet of the absorbent article has a skin care composition disposed thereon. The Office action states that reference does not teach a skin care composition of greater basis weight than the preferential acquisition zone.

The Office Action states that absent a showing the criticality in the skin care composition having a greater basis weight than the preferential acquisition zone, there are no unexpected results. The Office Action claims that the prior art provides the same results. The Office Action states that the expected result would be an absorbent article comprising a topsheet, a backsheet and absorbent core therebetween, an acquisition zone and skin care composition disposed thereon. The Office Action states that WO 99/22684 teaches that the configuration and construction of the absorbent core may have varying acquisition zones, and that the size and the absorbent capacity of the absorbent core may be varied to accommodate different uses such as diapers and sanitary napkins to accommodate the wearer.

The Office Action states that it would have been within the skill of the ordinary practitioner at the time the invention was made to use the teachings of the WO 99/22684 reference, with the expectation of achieving an absorbent article comprising a skin care composition which is known in the art for absorbing body exudates as instantly claimed. The Office Action further states that it would have been obvious to claim an absorbent article, comprising a topsheet, a backsheet and an absorbent core located therebetween, including a skin care composition disposed on the topsheet of the absorbent article.

If one looks to the Appellants' invention and the reference as whole, it is submitted that WO 99/12530 fails to establish a *prima facie* case of obviousness, because the reference does not teach or suggest each and every element within Appellants' Claim 1.

The present invention teaches an absorbent article that is provided with a **skin care composition**. The absorbent article of the present invention comprises a preferential acquisition zone and a skin care zone, the skin care zone is provided with the skin care composition of a greater basis weight than the preferential acquisition zone. WO 99/22684 does not teach the application of differing basis weights of a skin care composition to various zones of the absorbent article. WO 99/22684 teaches applying two different skin care formulations on two regions of the

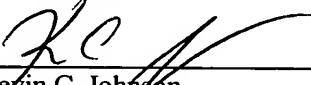
same web material. (See Claim 1 in WO 99/22684) The present invention applies one skin care formulation at different basis weights on two different zones of an absorbent article. WO 99/22684 fails to teach or suggest the application of differing basis weights of a skin care composition to various zones of the absorbent article. Thus, WO 99/22684 fails to teach or suggest every element of the present invention and hence, does not establish a *prima facie* case of obviousness. Therefore, WO 99/22684 does not render independent Claim 1 unpatentable under 35 U.S.C. § 103.

SUMMARY

In view of all of the above, Appellants respectfully submits that Claims 1-10 are not rendered obvious under 35 U.S.C. § 103 (a). Accordingly, Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the Examiner's rejections, and remand with directions to allow all of the claims of the present application.

Respectfully submitted,

By



Kevin C. Johnson
Attorney for Appellant(s)
Registration No. 35,558
(513) 634-3849

Date: September 9, 2004
Cincinnati, OH

Customer No. 27752

APPENDIX

1. An absorbent article having a body surface and a garment surface, the absorbent article comprising a topsheet disposed at the body surface, a backsheet disposed at the garment surface, and an absorbent core disposed therebetween, at least a portion of the absorbent article being provided with a skin care composition, characterized in that

the absorbent article has a preferential acquisition zone and a skin care zone, the preferential acquisition zone covering at least a portion of the vulva of the wearer when the absorbent article is applied on the wearer's body,

the skin care zone is provided with the skin care composition of greater basis weight than the preferential acquisition zone.
2. The absorbent article of Claim 1 wherein the preferential acquisition zone is provided with the skin care composition of not greater than 20 g/m².
3. The absorbent article of Claim 2 wherein the preferential acquisition zone is not provided with the skin care composition.
4. The absorbent article of Claim 1 wherein the skin care composition is provided on the topsheet of the preferential acquisition zone, wherein the acquisition rate of the portion of the topsheet which is provided with the skin care composition is not less than 70 % of the topsheet before the skin care composition is applied.
5. The absorbent article of Claim 1 wherein at least a portion of the skin care zone is provided with a skin care composition of between 0.1 g/m² and 100 g/m².
6. The absorbent article of Claim 1 wherein the absorbent article has a main body portion, the main body portion having at least three sections, the three section comprising a first end section, a second end section, and a central section which is disposed between the first end section and the second end section, wherein the preferential acquisition zone includes at least a portion of the central section.

7. The absorbent article of Claim 6 wherein the skin care zone includes at least a portion of the first end section or at least a portion of the second end section.
8. The absorbent article of Claim 7 wherein the preferential acquisition zone is defined by a transverse width and a longitudinal length, wherein the width is between 10 mm and 80 mm and the length is between 20 mm and 120 mm.
9. The absorbent article of Claim 1 wherein the absorbent article has flaps extending laterally outwardly, wherein the skin care zone includes a portion of the flap which is folded during the use of the absorbent article.
10. The absorbent article of Claim 1 wherein the absorbent article has a peripheral portion to define the outline of the absorbent article, wherein the skin care zone include at least a portion of the peripheral portion.